

MONTANA
ASSOCIATION OF
COUNTIES

STATE ADMINISTRATION

Exhibit No. 1

Date 2-12-07

Bill No. SB-364

July 21, 2006

Dear County Attorney's,

I would like to have your assistance in providing advice regarding a situation, which has not occurred yet in Montana but may well occur in the future. The situation I am referring to relates to filling a vacancy in the office of county commissioner. Under current law, Section 7-4-2106, MCA provides that when a vacancy occurs in the board of county commissioners from a failure to elect or otherwise, the remaining county commissioners shall fill the vacancy.

The potential problem would arise if two or all three of the county commission positions became vacant simultaneously. The situation would occur if while one commission position was vacant one of the remaining commissioner positions became vacant for one of the reasons enumerated in Section 2-16-501, MCA. It appears that Section 7-4-2106, MCA does not contemplate this situation as it specifies "the remaining county commissioners shall fill the vacancy".

Under Montana law, the remaining county commissioner apparently would not have the power to make the appointment. Section 7-1-2104, MCA provides: "**Exercise of county power.** A county's powers can only be exercised by the board of county commissioners or by agents and officers acting under their authority or authority of law." The statutes do not vest the power of the county in three commissioners acting individually, but in them as a single board. (Williams v. Board of Commissioners of Broadwater County 28 Mont. 361 (1903).)

The situation would be even more critical if the remaining commissioner position also became vacant. I believe this is a situation which could easily arise, as during every election cycle there will normally be four or five commission vacancies across the State.

I would appreciate your thoughts on this apparent void, and your suggestions regarding whether remedial legislation should be pursued to address the situation when multiple vacancies occur at the same time. The legislation might enumerate that the District Court Judge(s) would make interim appointment with the newly constituted commission to follow the appointment process specified in Section 7-4-2106, MCA, or might specify that the remaining county officers be constituted as a body for the purpose of filling the vacancy, or any one of a number of alternative methods.

Thank you in advance for your assistance,



L. Harold Blattie, Executive Director

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